

Remarks

This application has been reviewed in light of the first Office Action. Claims 1-21 are pending. Claims 16-19 are allowed, claims 4 and 12 are objected to, and the remaining claims are rejected.. In response, claims 1 and 5 are amended; claim 3 is canceled, without prejudice; and the following remarks are submitted. Reconsideration of this application, as amended, is requested.

In reviewing the attachments to the Office Action, the undersigned noticed that there was no initialed Information Disclosure Citation corresponding to Applicant's Second Information Disclosure Statement. The undersigned contacted the Examiner, who could not find the Second Information Disclosure Statement in the file. Applicant attaches hereto a copy of the Second Information Disclosure Statement and the postcard indicating receipt in the PTO. Applicant asks that the Examiner consider these references and make them of record. All are US Patents and should be readily available. If not, Applicant can submit an additional set of the references.

A main embodiment of the present invention is an apparatus for processing an elastomeric article that is either on a form or worn by a person. In the latter case, the person wearing the gloves places his/her hands through openings in the enclosure and to the article support location. The gloves are then cleaned of particulate matter by the ionized gaseous cleaning agent. The Caputo reference cannot anticipate or make obvious such an approach, because it requires the use of a vacuum. The use of a vacuum is incompatible with openings through which the gloved hands are placed to gain access to the interior of the enclosure while the cleaning process is underway.

Sec. 102 Rejection

Claims 1, 7, and 8 are rejected under 35 USC 102 as anticipated by Caputo US

Patent 5,288,460. Applicant traverses this ground of rejection.

The following principle of law applies to sec. 102 rejections. MPEP 2131 provides: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the ... claim. The elements must be arranged as required by the claim..." [citations omitted] This is in accord with the decisions of the courts. Anticipation under section 102 requires 'the presence in a single prior art disclosure of all elements of a claimed invention arranged as in that claim.' Carella v. Starlight Archery, 231 USPQ 644, 646 (Fed. Cir., 1986), quoting Panduit Corporation v. Dennison Manufacturing Corp., 227 USPQ 337, 350 (Fed. Cir., 1985)

Thus, identifying a single element of the claim which is not disclosed in the reference is sufficient to overcome a Sec. 102 rejection.

Caputo teaches a plasma sterilizing apparatus and process. The process is conducted in a medium vacuum of 0.1-10 Torr (Abstract; col. 3, line 4), or possibly as high as 100 Torr (claim 10). 100 Torr is about 0.13 atmosphere.

Claim 1 as amended recites in part:

"an access port with a non-hermetic gland seal therein sized so that a person wearing the elastomeric article may insert a hand and an arm through the gland to position the elastomeric article at an article support location"

As discussed at page 11, lines 6-19 of the Specification, in this embodiment now recited in claim 1, the user wears the article and thrusts the hands and arms into the chamber through the gland. This approach is possible because the pressure differential between the environment outside of the enclosure and the interior of the enclosure is small.

As far as Applicant can tell, Caputo discloses no elastomeric article as recited in the claims.

Caputo discloses no gland seal, because in Caputo the plasma process is conducted in a vacuum of no more than about 0.13 atmosphere. It would not be possible in Caputo for a person to thrust the covered hands into the interior of the chamber through a gland seal, because air would rush into the chamber to destroy the vacuum. Additionally, the elastomeric article would balloon and break under the applied vacuum.

Claim 1 further recites in part:

"the ionized gaseous cleaning agent being operable to dislodge a particulate contaminant from the elastomeric article and entrain the particulate contaminant in the gaseous flow as it passes by the elastomeric article"

Caputo has no disclosure of dislodging particulate contaminant from an article.

Claim 7 recites a "weakly ionized plasma source", and Caputo has no such disclosure. Claim 8 recites a number of different cleaning materials. Caputo has no disclosure of using such cleaning materials in his process. Instead, the discussion of hydrogen peroxide in Caputo is a discussion of unsuitable prior art materials (col. 2, lines 5-20) that are contrasted to the types of atmospheres used in Caputo's own process (col. 3, lines 11-20). Caputo's disclosure is directly contrary to the approach recited in claim 8.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

General Discussion of Law Applicable to Sec. 103 Rejections

The following principle of law applies to all sec. 103 rejections responded to herein. MPEP 2143.03 provides "To establish prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F2d 981, 180 USPQ 580 (CCPA 1974)." That is, to have any expectation

of rejecting the claims over a combination of references, each limitation must be taught somewhere in the applied prior art. If limitations are not taught in any of the applied prior art, the rejection cannot stand. In this case, the applied prior art references clearly do not arguably teach some limitations of the claims.

Further, MPEP 2143.01 provides that, in constructing a sec. 103 rejection, the proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference. MPEP 2143.02 requires that, in combining the teachings of two references, there must be a reasonable expectation of success in the combination. Both of these mandates would be violated in the proposed rejections, all of which are based on Caputo. Caputo requires a medium vacuum.

Further, the rejection may not properly be based on a reference which teaches away from the present invention as recited in the claims.

"A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. In re Spinnoble, 160 USPQ 237 244 (CCPA 1969)...As "a useful general rule,"..."a reference that 'teaches away' can not create a prima facie case of obviousness." In re Gurley, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994)"

Caputo teaches away from the inventions as recited in the claims, because it requires a moderate vacuum that is incompatible with the presently claimed approach. The present rejection is a sec. 103 combination rejection. It is well established that a proper sec. 103 combination rejection requires more than just finding in the references the elements recited in the claim (but which was not done here). To reach a proper teaching of an article or process through a combination of references, there must be stated an objective motivation to combine the teachings of the references, not a hindsight rationalization in light of the disclosure of the specification being examined. MPEP 2143 and 2143.01. See also, for example, In re Fine, 5 USPQ2d 1596, 1598 (at

headnote 1) (Fed.Cir. 1988), In re Laskowski, 10 USPQ2d 1397, 1398 (Fed.Cir. 1989), W.L. Gore & Associates v. Garlock, Inc., 220 USPQ 303, 311-313 (Fed. Cir., 1983), and Ex parte Levengood, 28 USPQ2d 1300 (Board of Appeals and Interferences, 1993); Ex parte Chicago Rawhide Manufacturing Co., 223 USPQ 351 (Board of Appeals 1984). As stated in In re Fine at 5 USPQ2d 1598:

"The PTO has the burden under section 103 to establish a prima facie case of obviousness. [citation omitted] It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references."

And, at 5 USPQ2d 1600:

"One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

Following this authority, the MPEP states that the examiner must provide such an objective basis for combining the teachings of the applied prior art. In constructing such rejections, MPEP 2143.01 provides specific instructions as to what must be shown in order to extract specific teachings from the individual references:

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention when there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)."

* * * * *

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)."

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"A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levengood, 28 USPQ2d 1300 (Bd.Pat.App.& Inter. 1993)."

Here, there is set forth no objective basis for combining the teachings of the references in the manner used by this rejection, and selecting the helpful portions from each reference while ignoring the unhelpful portions. An objective basis is one set forth in the art or which can be established by a declaration, not one that can be developed in light of the present disclosure. If the rejection is maintained, Applicant asks that the Examiner set forth the objective basis found in the references themselves for combining the teachings of the references.

All of these principles of law apply to the following Sec. 103 rejections, and the above discussion is incorporated into the response regarding each of these sec. 103 rejections.

Sec. 103 Rejections

Claim 3 is rejected under 35 USC 103 over Caputo in view of Guzman. Applicant traverses this ground of rejection.

Claim 3 depends from claim 1. Caputo does not teach the limitations of claim

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1 for the reasons stated above, which are incorporated here. Instead, Caputo requires the use of a medium vacuum. DeGuzman does not relate to a plasma cleaning system, and therefore adds nothing in this regard.

The explanation of the rejection suggests that it would be obvious to use an inflation approach as in Guzman in conjunction with the vacuum plasma approach of Caputo. Applicant must respectfully disagree. If an elastomer as recited in claim 1 were inflated in the vacuum of Caputo, it would balloon and break. Thus, both the approaches of Caputo and Guzman would be rendered inoperable if there were an attempt to combine their teachings.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claim 5 is rejected under 35 USC 103 over Caputo in view of Elledge. Applicant traverses this ground of rejection.

Claim 5 depends from claim 1. Caputo does not teach the limitations of claim 1 for the reasons stated above, which are incorporated here. Instead, Caputo requires the use of a medium vacuum. Elledge does not relate to a plasma cleaning system, and therefore adds nothing in this regard. If anything, Elledge teaches away from the approach of Caputo by requiring a fluid cleaning system and atmospheric pressure.

Elledge relates to a fluid cleaning system. Claim 5 relates to a gas-plasma cleaning system, not to a fluid cleaning system. For reasons discussed earlier, it is not possible to use glove-box type gland access ports with a medium-vacuum plasma device as in Caputo.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claim 6 is rejected under 35 USC 103 over Caputo in view of Jacob. Applicant traverses this ground of rejection.

The first basis of the traverse is that the identity of "Jacob" is not certain. Applicant cited two patents to Jacob, US Patents 4,818,488 and 5,393,490. The

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Examiner cited a patent to Jacobs, US Patent 4,643,876. Upon review, only one of these references mentions gloves at col. 1, lines 40-45, Jacob '490. Applicant will assume that the reference relied upon in this rejection is Jacob '490, unless the Examiner later indicates otherwise.

Claim 6 depends from claim 1. Caputo does not teach the limitations of claim 1 for the reasons stated above, which are incorporated here. Instead, Caputo requires the use of a medium vacuum. Jacob '490 also requires a vacuum, col. 3, lines 3-10). For the reasons stated earlier, both of these approaches are inconsistent with the limitations of claim 1 that recite the elastomeric article, in the case of claim 6 a glove, being worn on hands that are thrust into the chamber through a gland.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claim 9 is rejected under 35 USC 103 over Caputo in view of Koder. Applicant traverses this ground of rejection.

Claim 9 depends from claim 1. Caputo does not teach the limitations of claim 1 for the reasons stated above, which are incorporated here. Instead, Caputo requires the use of a medium vacuum. Koder apparently teaches an atmospheric-pressure process. So the approach of Koder is inconsistent with that of Caputo. The attempt to combine the teachings would render both technologies inoperable, which is not permitted by law in a sec. 103 rejection.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claims 2, 10, 14, 20, and 21 are rejected under 35 USC 103 over Caputo in view of Park. Applicant traverses this ground of rejection.

Claim 2 depends from claim 1. Caputo does not teach the limitations of claim 1 for the reasons stated above, which are incorporated here. Instead, Caputo requires the use of a medium vacuum. Park does not relate to plasma cleaning, and adds nothing in this regard.

Claim 10 recites in part:

"a nebulizer source of a vaporized cleaning material, and
a weakly ionized plasma source disposed within the interior of the
enclosure and proximate to the article support location to create a weakly
ionized plasma in the ambient atmosphere adjacent to the article support
location"

Neither references teaches a nebulizer source as recited. Neither reference teaches a weakly ionized plasma source, as recited. Neither reference teaches a weakly ionized plasma.

Claim 10 further recites "an elastomeric article". Neither reference teaches an elastomeric article.

Claim 10 further recites "the cleaning agent being operable to dislodge a particulate contaminant from the elastomeric article". Neither reference has any teaching of such a cleaning agent.

There is no basis to combine the teachings of these references. Park relates to measurement of particles. There is not one word in Caputo about removing particles, and therefore one skilled in the art would not be motivated to seek to incorporate a particle counter as in Park.

Claims 20-21 have most of the limitations of claim 10, and are patentable over these references for the reasons stated above. Additionally, Applicant can find no teaching in Park of the correlation step of claim 21, and requests that its location be pointed out specifically if the rejection is maintained.

Claim 14 depends from claim 10 and incorporates its limitations. It is patentable for the reasons stated above. Additionally, claim 14 recites specific cleaning materials. Caputo has no teaching of using such cleaning materials in his process. Instead, the discussion of hydrogen peroxide in Caputo is a discussion of unsuitable prior art materials (col. 2, lines 5-20) that are contrasted to the types of atmospheres used in Caputo's own process (col. 3, lines 11-20). Caputo teaches directly away from using

hydrogen peroxide.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claim 13 is rejected under 35 USC 103 as unpatentable over Caputo in view of Park and further in view of Jacob. Applicant traverses this ground of rejection.

Applicant will assume that "Jacob" is Jacob '490 for the reasons stated earlier.

Each of the references has been discussed before, and the prior discussion of the rejections of claim 6 and of claims 2, 10, 14, 20, and 21 is incorporated here. Claim 13 incorporates the limitations of claim 10 and is not taught by the combination of Caputo and Park for the reasons stated earlier. Jacob '490 adds nothing in this regard.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claim 11 is rejected under 35 USC 103 as unpatentable over Caputo in view of Park, and further in view of DeGuzman. Applicant traverses this ground of rejection.

The references have been discussed above, and that discussion is incorporated here. Caputo and Park do not teach the limitations of claim 10, from which claim 11 depends, and DeGuzman adds nothing in that regard because it does not deal with plasma processes. Additionally, as discussed earlier, DeGuzman's teachings are inconsistent with the vacuum teaching of Caputo.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claim 15 is rejected under 35 USC 103 as unpatentable over Caputo in view of Park, and further in view of Koder. Applicant traverses this ground of rejection.

The references have been discussed above, and that discussion is incorporated here. Caputo and Park do not teach the limitations of claim 10, from which claim 15 depends, and Koder adds nothing in that regard because it does not deal with plasma processes. Additionally, as discussed earlier, Koder's teachings are inconsistent with

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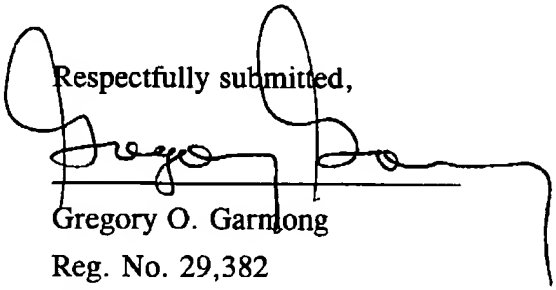
the vacuum teaching of Caputo. One cannot simply argue that a process that requires a vacuum may arbitrarily be combined with a process that requires atmospheric pressure.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Applicant submits that the application is now in condition for allowance, and requests such allowance.

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office at fax 703-308-7764 on July 26, 2001.

Respectfully submitted,



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